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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/601,963	06/23/2003	Raymond P. Vito	17625-0049	8802
29052	7590	04/22/2004		
SUTHERLAND ASBILL & BRENNAN LLP 999 PEACHTREE STREET, N.E. ATLANTA, GA 30309			EXAMINER FLANAGAN, BEVERLY MEINDL	
			ART UNIT 3739	PAPER NUMBER
DATE MAILED: 04/22/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/601,963	Applicant(s) VITO ET AL.	
	Examiner Beverly M. Flanagan	Art Unit 3739	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
 - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
 - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
 - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-27 is/are pending in the application.
4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 23-25 is/are allowed.
- 6) ☒ Claim(s) 1-4, 6, 8, 15, 17, 18, 20, 22, 26 and 27 is/are rejected.
- 7) ☒ Claim(s) 5, 7, 9-14, 16, 19 and 21 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.


BEVERLY M. FLANAGAN
PRIMARY EXAMINER

Attachment(s)

- | | |
|---|--|
| <p>1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)</p> <p>2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)</p> <p>3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>6/23/03 & 9/5/03</u>.</p> | <p>4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.</p> <p>5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)</p> <p>6) <input type="checkbox"/> Other: ____.</p> |
|---|--|

DETAILED ACTION

Information Disclosure Statement

The information disclosure statements filed June 23, 2003 and September 5, 2003 have been made of record and the references cited therein have been considered as to the merits.

Deletion of Invention/Petition under 37 CFR 1.48(b)

In view of the papers filed June 23, 2003, the inventorship in this nonprovisional application has been changed by the deletion of Jack P. Griffis, III.

The application will be forwarded to the Office of Initial Patent Examination (OIPE) for issuance of a corrected filing receipt, and correction of the file jacket and PTO PALM data to reflect the inventorship as corrected.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-4, 6, 8, 15, 17, 18, 20, 22, 26 and 27 are rejected under 35 U.S.C. 102(b) as being anticipated by Tu et al. (U.S. Patent No. 5,376,110).

In regard to claims 1 and 6, Tu et al. teach a device for rectilinearly stretching a section of a coronary artery comprised of a support member 12 that is attached to the

artery at two attachment positions and means for operating the support member 12 to cause the artery between the two attachment positions to stretch axially (see Figure 2b).

In regard to claims 2 and 3, Figure 2b shows that the attachment positions are in a fixed position relative to one another and Figures 2c and 2d demonstrate that the operating means can displace the two attachment positions away from each other over a period of time (see also col. 9, lines 33-43). **In regard to claim 4**, Tu et al. teach a holding device 14 and a clamp member 28 that constitute a pair of opposed straps that can be removably secured at the two attachment positions. **In regard to claim 8**, although not depicted by Tu et al. the device inherently includes a controller for controlling the operating means (see also col. 9, lines 33-43 which discusses rhythmic stretching and relaxation of the artery, indicating the use of a controller). **In regard to claims 15, 18, 20, 22, 26 and 27**, see col. 9, lines 1-43 of Tu et al. **In regard to claim 17**, see col. 8, lines 63-68 of Tu et al.

Allowable Subject Matter

Claims 23-25 are allowed.

Claims 5, 7, 9-14, 16, 19 and 21 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Applicant should note the following prior art references disclosing stretching of blood vessel grafts: McNally et al., U.S. Patent No. 5,122,110 and Yap et al., U.S. Patent Application Publication No. 2003/0065247.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Beverly M. Flanagan whose telephone number is (703) 305-7202. The examiner can normally be reached on Mondays, Tuesdays and Thursdays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Linda C.M. Dvorak can be reached on (703) 308-0994. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Beverly M. Flanagan

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